

House File 2109

S-5061

1 Amend House File 2109, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting clause
4 and inserting:

5 <Section 1. Section 142A.6, subsection 6, paragraph
6 d, Code 2014, is amended to read as follows:

7 d. For the purpose of this subsection,
8 manufacturer, distributor, wholesaler, retailer, and
9 distributing agent mean as defined in section 453A.1
10 or 453A.42.

11 Sec. 2. Section 232C.4, subsection 3, Code 2014, is
12 amended to read as follows:

13 3. An emancipated minor shall remain subject
14 to voting restrictions under chapter 48A, gambling
15 restrictions under chapter 99B, 99D, 99F, 99G, or 725,
16 alcohol restrictions under chapter 123, compulsory
17 attendance requirements under chapter 299, and
18 cigarette tobacco, tobacco products, simulated smoking
19 devices, and cigarette restrictions under chapter 453A.

20 Sec. 3. Section 321.216C, Code 2014, is amended to
21 read as follows:

22 **321.216C Use of driver's license or nonoperator's**
23 **identification card by underage person to obtain**
24 **cigarettes or tobacco, tobacco products, simulated**
25 **smoking devices, or cigarettes.**

26 A person who is under the age of eighteen, who
27 alters or displays or has in the person's possession
28 a fictitious or fraudulently altered driver's license
29 or nonoperator's identification card and who uses
30 the license or card to violate or attempt to violate
31 section 453A.2, subsection 2, commits a simple
32 misdemeanor punishable as a scheduled violation under
33 section 805.8A, subsection 4. The court shall forward
34 a copy of the conviction to the department.

35 Sec. 4. Section 453A.1, subsections 19 and 21, Code
36 2014, are amended to read as follows:

37 19. "*Place of business*" is construed to mean and
38 include any place where cigarettes or simulated smoking
39 devices are sold or where cigarettes or simulated
40 smoking devices are stored within or without the state
41 of Iowa by the holder of an Iowa permit or kept for the
42 purpose of sale or consumption; or if sold from any
43 vehicle or train, the vehicle or train on which or from
44 which such cigarettes or simulated smoking devices are
45 sold shall constitute a place of business.

46 21. "*Retailer*" shall mean and include every person
47 in this state who shall sell, distribute, or offer for
48 sale for consumption or possess for the purpose of
49 sale for consumption, cigarettes or simulated smoking
50 devices irrespective of quantity or amount or the

1 number of sales.

2 Sec. 5. Section 453A.1, Code 2014, is amended by
3 adding the following new subsection:

4 NEW SUBSECTION. 23A. "Simulated smoking device"
5 means any product containing or delivering nicotine
6 or any other similar substance intended for human
7 consumption that can be used by a person to simulate
8 smoking including through inhalation of vapor or
9 aerosol from the product. "Simulated smoking device"
10 includes any component part of such product whether or
11 not sold separately. "Simulated smoking device" does
12 not include any product that has been approved by the
13 United States food and drug administration for sale as
14 a tobacco cessation product and is being marketed and
15 sold solely for that approved purpose.

16 Sec. 6. Section 453A.2, subsections 1, 2, 3, and 8,
17 Code 2014, are amended to read as follows:

18 1. A person shall not sell, give, or otherwise
19 supply any tobacco, tobacco products, simulated smoking
20 devices, or cigarettes to any person under eighteen
21 years of age.

22 2. A person under eighteen years of age shall not
23 smoke, use, possess, purchase, or attempt to purchase
24 any tobacco, tobacco products, simulated smoking
25 devices, or cigarettes.

26 3. Possession of cigarettes or tobacco, tobacco
27 products, simulated smoking devices, or cigarettes
28 by an individual under eighteen years of age does
29 not constitute a violation under this section if the
30 individual under eighteen years of age possesses the
31 cigarettes or tobacco, tobacco products, simulated
32 smoking devices, or cigarettes as part of the
33 individual's employment and the individual is employed
34 by a person who holds a valid permit under this chapter
35 or who lawfully offers for sale or sells cigarettes or
36 tobacco, tobacco products, simulated smoking devices,
37 or cigarettes.

38 8. a. A person shall not be guilty of a violation
39 of this section if conduct that would otherwise
40 constitute a violation is performed to assess
41 compliance with cigarette and tobacco, tobacco
42 products, simulated smoking devices, or cigarette laws
43 if any of the following applies:

44 (1) The compliance effort is conducted by or under
45 the supervision of law enforcement officers.

46 (2) The compliance effort is conducted with the
47 advance knowledge of law enforcement officers and
48 reasonable measures are adopted by those conducting the
49 effort to ensure that use of cigarettes or tobacco,
50 tobacco products, simulated smoking devices, or

1 cigarettes by individuals under eighteen years of age
2 does not result from participation by any individual
3 under eighteen years of age in the compliance effort.

4 b. For the purposes of this subsection, "law
5 enforcement officer" means a peace officer as defined
6 in section 801.4 and includes persons designated under
7 subsection 4 to enforce this section.

8 Sec. 7. Section 453A.4, subsection 1, Code 2014, is
9 amended to read as follows:

10 1. If a person holding a permit under this chapter
11 or an employee of such a permittee has a reasonable
12 belief based on factual evidence that a driver's
13 license as defined in section 321.1, subsection
14 20A, or nonoperator's identification card issued
15 pursuant to section 321.190 offered by a person who
16 wishes to purchase ~~cigarettes or tobacco~~, tobacco
17 products, simulated smoking devices, or cigarettes is
18 altered or falsified or belongs to another person,
19 the permittee or employee may retain the driver's
20 license or nonoperator's identification card. Within
21 twenty-four hours, the card shall be delivered to the
22 appropriate city or county law enforcement agency of
23 the jurisdiction in which the permittee's premises are
24 located, and the permittee shall file a written report
25 of the circumstances under which the card was retained.
26 The local law enforcement agency may investigate
27 whether a violation of section 321.216, 321.216A, or
28 321.216C has occurred. If an investigation is not
29 initiated or probable cause is not established by the
30 local law enforcement agency, the driver's license or
31 nonoperator's identification card shall be delivered
32 to the person to whom it was issued. The local law
33 enforcement agency may forward the card with the
34 report to the state department of transportation for
35 investigation, in which case, the state department of
36 transportation may investigate whether a violation of
37 section 321.216, 321.216A, or 321.216C has occurred.
38 The state department of transportation shall return
39 the card to the person to whom it was issued if an
40 investigation is not initiated or probable cause is not
41 established.

42 Sec. 8. Section 453A.5, subsection 1, Code 2014, is
43 amended to read as follows:

44 1. The alcoholic beverages division of the
45 department of commerce shall develop a tobacco
46 compliance employee training program not to exceed
47 two hours in length for employees and prospective
48 employees of retailers, as defined in sections 453A.1
49 and 453A.42, to inform the employees about state and
50 federal laws and regulations regarding the sale of

1 ~~cigarettes and tobacco, tobacco products, simulated~~
2 ~~smoking devices, and cigarettes~~ to persons under
3 eighteen years of age and compliance with and the
4 importance of laws regarding the sale of ~~cigarettes and~~
5 ~~tobacco, tobacco products, simulated smoking devices,~~
6 ~~and cigarettes~~ to persons under eighteen years of age.

7 Sec. 9. Section 453A.13, subsection 1, Code 2014,
8 is amended to read as follows:

9 1. *Permits required.* Every distributor,
10 wholesaler, cigarette vendor, and retailer, now engaged
11 or who desires to become engaged in the sale or use of
12 cigarettes, upon which a tax is required to be paid,
13 and every retailer now engaged or who desires to become
14 engaged in selling, offering for sale, or distributing
15 simulated smoking devices shall obtain a state or
16 retail cigarette permit as a distributor, wholesaler,
17 cigarette vendor, or retailer, as the case may be.

18 Sec. 10. Section 453A.13, subsection 2, paragraph
19 a, Code 2014, is amended to read as follows:

20 a. The department shall issue state permits to
21 distributors, wholesalers, and cigarette vendors
22 subject to the conditions provided in this division.
23 Cities may issue retail permits to ~~dealers~~ retailers
24 within their respective limits. County boards of
25 supervisors may issue retail permits to ~~dealers~~
26 retailers in their respective counties, outside of the
27 corporate limits of cities.

28 Sec. 11. Section 453A.13, subsections 6, 9, and 10,
29 Code 2014, are amended to read as follows:

30 6. *No sales without permit.* ~~No~~ A distributor,
31 wholesaler, cigarette vendor, or retailer shall not
32 sell any cigarettes or simulated smoking devices until
33 such application has been filed and the fee prescribed
34 paid for a permit and until such permit is obtained and
35 only while such permit is unrevoked and unexpired.

36 9. *Permit — form and contents.* Each permit issued
37 shall describe clearly the place of business for which
38 it is issued, shall be nonassignable, consecutively
39 numbered, designating the kind of permit, and shall
40 authorize the sale of cigarettes or simulated smoking
41 devices in this state subject to the limitations and
42 restrictions herein contained. The retail permits
43 shall be upon forms furnished by the department or on
44 forms made available or approved by the department.

45 10. *Permit displayed.* The permit shall, at all
46 times, be publicly displayed by the distributor,
47 wholesaler, or retailer at the place of business so
48 as to be easily seen by the public and the persons
49 authorized to inspect the place of business. The
50 proprietor or keeper of any building or place where

1 ~~cigarettes and other, simulated smoking devices, or~~
2 tobacco products are kept for sale, or with intent to
3 sell, shall upon request of any agent of the department
4 or any peace officer exhibit the permit. A refusal or
5 failure to exhibit the permit is prima facie evidence
6 that the cigarettes, simulated smoking devices,
7 tobacco, or other tobacco products are kept for sale or
8 with intent to sell in violation of this division.

9 Sec. 12. Section 453A.15, subsection 4, Code 2014,
10 is amended to read as follows:

11 4. Every permit holder or other person shall, when
12 requested by the department, make additional reports as
13 the department deems necessary and proper and shall at
14 the request of the department furnish full and complete
15 information pertaining to any transaction of the permit
16 holder or other person involving the purchase or sale
17 or use of cigarettes or simulated smoking devices, or
18 the purchase of cigarette stamps.

19 Sec. 13. Section 453A.36, subsections 6, 7, and 11,
20 Code 2014, are amended to read as follows:

21 6. Any sales of cigarettes or tobacco, tobacco
22 products, simulated smoking devices, or cigarettes
23 made through a cigarette vending machine are subject
24 to rules and penalties relative to retail sales of
25 cigarettes and tobacco, tobacco products, simulated
26 smoking devices, and cigarettes provided for in this
27 chapter. Cigarettes shall not be sold through any
28 cigarette vending machine unless the cigarettes have
29 been properly stamped or metered as provided by this
30 division, and in case of violation of this provision,
31 the permit of the dealer authorizing retail sales of
32 cigarettes shall be revoked. Payment of the permit fee
33 as provided in section 453A.13 authorizes a cigarette
34 vendor to sell cigarettes or tobacco, tobacco products,
35 simulated smoking devices, and cigarettes through
36 vending machines. However, cigarettes or tobacco,
37 tobacco products, simulated smoking devices, and
38 cigarettes shall not be sold through a vending machine
39 unless the vending machine is located in a place
40 where the retailer ensures that no person younger than
41 eighteen years of age is present or permitted to enter
42 at any time. Cigarettes or Tobacco, tobacco products,
43 simulated smoking devices, and cigarettes shall not
44 be sold through any cigarette vending machine if
45 such products are placed together with any nontobacco
46 product, other than matches, in the cigarette vending
47 machine. This section does not require a retail permit
48 holder to buy a cigarette vendor's permit if the retail
49 permit holder is in fact the owner of the cigarette
50 vending machines and the machines are operated in the

1 location described in the retail permit.

2 7. a. It shall be unlawful for a person other than
3 a holder of a retailer as defined in section 453A.1
4 or 453A.42 who holds a valid retail permit to sell
5 tobacco, tobacco products, simulated smoking devices,
6 or cigarettes at retail.

7 b. ~~No~~ A state permit holder shall not sell or
8 distribute cigarettes at wholesale to any person in the
9 state of Iowa who does not hold a permit authorizing
10 the retail sale of cigarettes or who does not hold a
11 state permit as a manufacturer, distributing agent,
12 wholesaler, or distributor.

13 11. Violation of this section by the holder
14 of a retailer's, distributor's, wholesaler's or
15 manufacturer's permit shall be grounds for the
16 revocation of such permit.

17 Sec. 14. Section 453A.36A, subsection 1, Code 2014,
18 is amended to read as follows:

19 1. ~~Beginning January 1, 1999, except~~ Except as
20 provided in section 453A.36, subsection 6, a retailer
21 shall not sell or offer for sale cigarettes or tobacco,
22 tobacco products, in a quantity of less than a carton,
23 simulated smoking devices, or cigarettes through the
24 use of a self-service display.

25 Sec. 15. Section 453A.39, Code 2014, is amended to
26 read as follows:

27 **453A.39 Tobacco ~~product,~~ tobacco products, simulated**
28 **smoking devices, and cigarette samples — restrictions**
29 **— administration.**

30 1. A manufacturer, distributor, wholesaler,
31 retailer, or distributing agent, or agent thereof,
32 shall not give away cigarettes or tobacco, tobacco
33 products, simulated smoking devices, or cigarettes
34 at any time in connection with the manufacturer's,
35 distributor's, wholesaler's, retailer's, or
36 distributing agent's business or for promotion of the
37 business or product, except as provided in subsection
38 2.

39 2. a. All cigarette samples shall be shipped only
40 to a distributor that has a permit to stamp cigarettes
41 or little cigars with Iowa tax. All cigarette samples
42 must have a cigarette stamp. The manufacturer shipping
43 samples under this section shall send an affidavit
44 to the director stating the shipment information,
45 including the date shipped, quantity, and to whom
46 the samples were shipped. The distributor receiving
47 the shipment shall send an affidavit to the director
48 stating the shipment information, including the date
49 shipped, quantity, and from whom the samples were
50 shipped. These affidavits shall be duly notarized and

1 submitted to the director at the time of shipment and
2 receipt of the samples. The distributor shall pay the
3 tax on samples by separate remittance along with the
4 affidavit.

5 *b.* A manufacturer, distributor, wholesaler,
6 retailer, or distributing agent or agent thereof
7 shall not give away any cigarettes or tobacco, tobacco
8 products, simulated smoking devices, or cigarettes
9 to any person under eighteen years of age, or within
10 five hundred feet of any playground, school, high
11 school, or other facility when such facility is being
12 used primarily by persons under age eighteen for
13 recreational, educational, or other purposes.

14 *c.* Proof of age shall be required if a reasonable
15 person could conclude on the basis of outward
16 appearance that a prospective recipient of a sample may
17 be under eighteen years of age.

18 Sec. 16. Section 453A.42, subsections 1, 2, 8, 9,
19 10, 11, 13, and 16, Code 2014, are amended to read as
20 follows:

21 1. "*Business*" means any trade, occupation,
22 activity, or enterprise engaged in for the purpose of
23 selling or distributing tobacco, tobacco products, or
24 simulated smoking devices in this state.

25 2. "*Consumer*" means any person who has title
26 to or possession of tobacco, tobacco products, or
27 simulated smoking devices in storage, for use or other
28 consumption in this state.

29 8. "*Place of business*" means any place where
30 tobacco, tobacco products, or simulated smoking
31 devices are sold or where tobacco, tobacco products, or
32 simulated smoking devices are manufactured, stored, or
33 kept for the purpose of sale or consumption, including
34 any vessel, vehicle, airplane, train, or vending
35 machine.

36 9. "*Retail outlet*" means each place of business
37 from which tobacco, tobacco products, or simulated
38 smoking devices are sold to consumers.

39 10. "*Retailer*" means any person engaged in the
40 business of selling tobacco, tobacco products, or
41 simulated smoking devices to ultimate consumers.

42 11. "*Sale*" means any transfer, exchange, or barter,
43 in any manner or by any means whatsoever, for a
44 consideration, and includes and means all sales made by
45 any person. It includes a gift by a person engaged in
46 the business of selling tobacco, tobacco products, or
47 simulated smoking devices for advertising, as a means
48 of evading the provisions of this division, or for any
49 other purposes whatsoever.

50 13. "*Storage*" means any keeping or retention of

1 tobacco, tobacco products, or simulated smoking devices
2 for use or consumption in this state.

3 16. "Use" means the exercise of any right or
4 power incidental to the ownership of tobacco, tobacco
5 products, or simulated smoking devices.

6 Sec. 17. Section 453A.45, subsection 3, Code 2014,
7 is amended to read as follows:

8 3. Every retailer and subjobber shall procure
9 itemized invoices of all tobacco, tobacco products,
10 and simulated smoking devices purchased. The invoices
11 shall show the name and address of the seller and the
12 date of purchase. The retailer and subjobber shall
13 preserve a legible copy of each invoice for three years
14 from the date of purchase. Invoices shall be available
15 for inspection by the director or the director's
16 authorized agents or employees at the retailer's or
17 subjobber's place of business.

18 Sec. 18. Section 453A.47A, subsections 1, 2, 4, 5,
19 and 10, Code 2014, are amended to read as follows:

20 1. *Permits required.* A person shall not engage
21 in the business of a retailer of tobacco, tobacco
22 products, or simulated smoking devices at any place of
23 business without first having received a permit as a
24 ~~tobacco products~~ retailer.

25 2. *No sales without permit.* A retailer shall
26 not sell any tobacco, tobacco products, or simulated
27 smoking devices until an application has been filed and
28 the fee prescribed paid for a permit and until such
29 permit is obtained and only while such permit is not
30 suspended, unrevoked, or unexpired.

31 4. *Retailer — cigarettes and tobacco, tobacco*
32 *products, and simulated smoking devices.* A retailer,
33 as defined in section 453A.1, who holds a permit under
34 division I of this chapter is not required to also
35 obtain a retail permit under this division. However,
36 if a retailer, as defined in section 453A.1, only holds
37 a permit under division I of this chapter and that
38 permit is suspended, revoked, or expired, the retailer
39 shall not sell any ~~cigarettes or~~ tobacco, tobacco
40 products, or simulated smoking devices during the time
41 which the permit is suspended, revoked, or expired.

42 5. *Separate permit.* A separate retail permit
43 shall be required of a distributor or subjobber if
44 the distributor or subjobber sells tobacco, tobacco
45 products, or simulated smoking devices at retail.

46 10. *Records and reports of retailers.*

47 a. The director shall prescribe the forms necessary
48 for the efficient administration of this section
49 and may require uniform books and records to be used
50 and kept by each retailer or other person as deemed

1 necessary.

2 *b.* Every retailer shall, when requested by the
3 department, make additional reports as the department
4 deems necessary and proper and shall at the request of
5 the department furnish full and complete information
6 pertaining to any transaction of the retailer involving
7 the purchase or sale or use of tobacco, tobacco
8 products, or simulated smoking devices.

9 Sec. 19. Section 805.8C, subsection 3, Code 2014,
10 is amended to read as follows:

11 3. ~~Smoking violations~~ Violations related to smoking,
12 tobacco, tobacco products, simulated smoking devices,
13 and cigarettes.

14 *a.* For violations described in section 142D.9,
15 subsection 1, the scheduled fine is fifty dollars,
16 and is a civil penalty, and the criminal penalty
17 surcharge under section 911.1 shall not be added to
18 the penalty, and the court costs pursuant to section
19 805.9, subsection 6, shall not be imposed. If the
20 civil penalty assessed for a violation described in
21 section 142D.9, subsection 1, is not paid in a timely
22 manner, a citation shall be issued for the violation
23 in the manner provided in section 804.1. However, a
24 person under age eighteen shall not be detained in a
25 secure facility for failure to pay the civil penalty.
26 The complainant shall not be charged a filing fee.

27 *b.* For violations of section 453A.2, subsection 1,
28 by an employee of a retailer, the scheduled fine is as
29 follows:

30 (1) If the violation is a first offense, the
31 scheduled fine is one hundred dollars.

32 (2) If the violation is a second offense, the
33 scheduled fine is two hundred fifty dollars.

34 (3) If the violation is a third or subsequent
35 offense, the scheduled fine is five hundred dollars.

36 *c.* For violations of section 453A.2, subsection
37 2, the scheduled fine is as follows and is a civil
38 penalty, and the criminal penalty surcharge under
39 section 911.1 shall not be added to the penalty, and
40 the court costs pursuant to section 805.9, subsection
41 6, shall not be imposed:

42 (1) If the violation is a first offense, the
43 scheduled fine is fifty dollars.

44 (2) If the violation is a second offense, the
45 scheduled fine is one hundred dollars.

46 (3) If the violation is a third or subsequent
47 offense, the scheduled fine is two hundred fifty
48 dollars.

49 Sec. 20. APPLICATION TO EXISTING PRODUCTS. Nothing
50 in this Act shall be construed to prohibit the

1 department of revenue from collecting taxes imposed
2 on cigarettes or tobacco products subject to taxation
3 under chapter 453A prior to July 1, 2014.

4 Sec. 21. CODE EDITOR DIRECTIVE. The Code
5 editor shall modify the title of chapter 453A to
6 read "Cigarette and Tobacco Taxes and Regulation of
7 Simulated Smoking Devices".>

8 2. Title page, lines 1 and 2, by striking <vapor
9 products and alternative nicotine products> and
10 inserting <simulated smoking devices>

COMMITTEE ON HUMAN RESOURCES
AMANDA RAGAN, CHAIRPERSON